

WATER RESERVATION

NOV. *update* 1989

WATER RESOURCES DIVISION
MONTANA DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

Purpose of the newsletter

The *Water Reservation Update* is published periodically to inform Montanans of the ongoing water reservation proceeding in the Missouri River basin of Montana. This issue of the newsletter briefly describes the

reservation process and discusses the current status of the applications for water in the basin above Fort Peck Dam, the progress of the EIS analysis, and the results from the public scoping meetings.

An overview of the Missouri basin water reservations

In 1985, the Montana Legislature directed the Department of Natural Resources and Conservation (DNRC) to initiate a proceeding to allow for the reservation of water in the Missouri and Little Missouri river basins. The legislature felt that a basinwide system of water reservations would form a strong basis for protecting Montana's share of Missouri River water from downstream states. Water reservations provide an opportunity to set aside water for future diversionary and consumptive uses and also to allocate water for maintaining instream flows for the protection of aquatic life, recreation, and water quality. The law allows only public entities such as local governments, conservation districts, and state and federal agencies to apply for and hold water reservations.

The reservation application process is coordinated by DNRC, but the *Board* of Natural Resources and Conservation (Board) decides whether to grant the water reservations. The Board is a governor-appointed group of

seven citizens knowledgeable in natural resource management and conservation. The Board's decisions will be based on the information provided in the application documents, an environmental impact statement, and the results of a contested case hearing.

Due to the vast size of this basin, the Missouri reservation proceeding has been split into two parts. Applications for water in the upper portion of the basin, which encompasses the drainage area above Fort Peck Dam, are being considered first. After an environmental review and contested case hearing, final decisions on the upper basin applications will be made by the Board before July 1, 1992. Applications for water in the basin below Fort Peck Dam and in the Little Missouri and Milk river basins must be submitted by July 1, 1991, and will undergo similar review and hearings. The Board has until December 31, 1993, to act upon these applications.

Status of the proceeding for applications above Fort Peck Dam

Applications for the Missouri basin below Fort Peck Dam, including the Milk and Little Missouri river basins, are still in the preparation stages, but the environmental review of the basin above Fort Peck Dam is in full swing. All of the applications are in, and DNRC staff is gathering baseline data and conducting a preliminary analysis of

possible impacts of these reservation requests.

The application deadline for water reservations in the basin above Fort Peck Dam was July 1, 1989. DNRC received applications for consumptive water uses from 18 conser-

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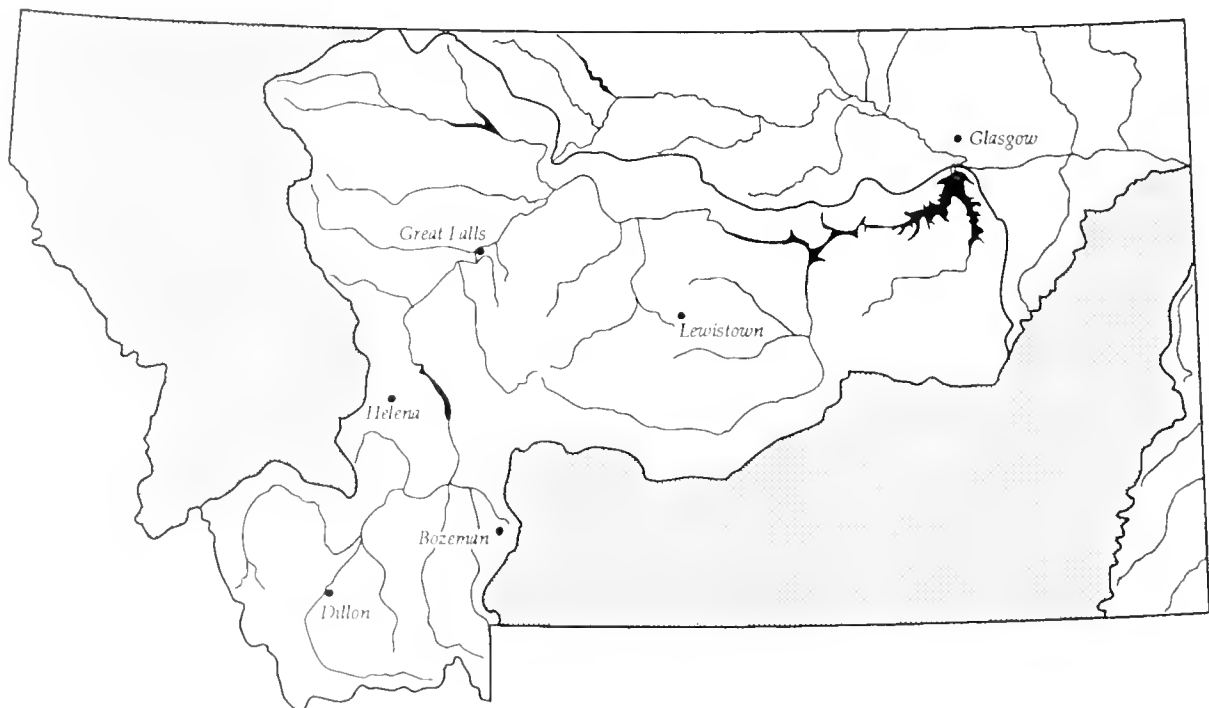
*Status of the
proceedings
(continued)*

vation districts to provide water for about 220 new irrigation projects; 18 municipalities; and from the U.S. Bureau of Reclamation to draw water from the Missouri to alleviate water shortages in the Milk River basin. Nonconsumptive water uses were applied for by the Department of Fish, Wildlife and Parks for instream flows on about 250 streams to protect fish, wildlife, and recreation resources; the Department of Health and Environmental Sciences for instream flows to protect water quality; and the U.S. Bureau of Land Management for instream flows on 31 headwater streams to protect

fisheries and wildlife. A more detailed list of the applicants' requests is available from DNRC.

The Environmental Impact Statement

The Board's decisions on the requested water reservations have the potential to "significantly affect the quality of the human environment" as defined by the Montana Environmental Policy Act. Consequently, DNRC is required to prepare an environmental impact statement (EIS) that informs the public about all known or foreseeable beneficial and adverse effects of granting or



Missouri River basin above Fort Peck Dam

Missouri basin below Fort Peck Dam,
Little Missouri and Milk river basins

Application deadline was July 1, 1989.

Draft EIS due out in January 1991.

Final EIS due out in August 1991.

Contested case hearing held during winter of 1991-1992.

Board decision by July 1, 1992.

Application deadline is July 1, 1991.

Dates will be assigned for the environmental review
and hearings process.

Board decision by December 31, 1993.

Status of the proceedings (continued)

not granting each reservation request. The EIS will describe the affected environment, present the environmental impacts likely to result from granting the reservations, and discuss alternatives the Board may choose from when acting on the reservations.

The EIS process allows ample opportunity for the public to participate and make its concerns known. The first opportunity was provided at a series of 10 public scoping meetings held by DNRC around the state during July 1989. The comments gathered at these meetings will be addressed in the EIS (see the article in this newsletter, "A Summary of the Scoping Meetings"). After DNRC publishes the draft EIS, the public will have at least 30 days to review the document and provide comments in writing or at a second series of public meetings. Based on these comments and on any new information made available, DNRC will publish a final EIS. The scheduled deadline for publication of the final EIS is August 1991.

The contested case hearing

After the final EIS is published, water right holders and the public will receive legal notice of the applications for water above Fort Peck Dam that are pending before the Board. Affected parties may then submit formal objections to any of the reservation applications. Once the objection period closes, a hearings examiner appointed by the Board will conduct a contested case hearing on the proposed reservations. The applicants and those parties having filed objections must appear at the hearing, where they may present evidence and be cross-examined under oath. Following the contested case hearing, the hearings examiner will present a proposed decision to the Board. The hearing will be held during the winter and spring of 1991-1992. The final Board decision on applications for water in the basin above Fort Peck Dam must be made before July 1, 1992, as provided by law.

A summary of scoping meeting comments

Last July, DNRC held meetings in 10 Missouri basin communities to gather public comments about the requested water reservations. A total of 118 people attended. Dillon, with 43 participants, drew the largest crowd; Bozeman, with 21, was second. Meetings were also held in Ennis, Fort Benton, Glasgow, Great Falls, Helena, Lewistown, Roundup, and Whitehall.

Participants at the meetings voiced a wide range of concerns, from arsenic contamination to the prospects for new storage development. Questions were raised about water law and how the reservations would operate. One concern was whether the reservations would take away or interfere with existing water rights. Statements were heard both for and against the requests for municipal, irrigation, and instream reservations, and some people suggested giving priority to one use over the others.

Comments about water availability were fairly common, and water shortages and dry streams were described. Storage and water

leasing were two ways mentioned to relieve water shortages. Other streams were cited as being fully appropriated or overappropriated, with claims going back to the 1800s. Some commented that the statewide adjudication should be completed before any reservations are granted to better determine how much water is available for allocation. A detailed water availability study was called for at more than one meeting.

Some people mentioned the need to protect present water rights and called for better enforcement. Questions were posed about how reservations for both consumptive and nonconsumptive uses would be enforced. It was also noted that some of the larger existing water rights, such as those for hydropower and federal agencies, might limit further development throughout the basin.

A number of possible impacts and benefits were ascribed to granting the reservations. Some people commented on the economic benefits of irrigation, while others worried

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*Scoping meeting
comments (continued)*

about irrigation's withdrawal of streamflows needed to dilute water-borne arsenic. Water quality was also a concern in discussions of the municipal and instream flow requests. Some people spoke in favor of protecting the fisheries and public drinking water supplies, yet others worried that the size of the instream requests might preclude further water development and other economic growth in the basin. Some water right holders pointed out that if municipal reservation requests are denied, towns and cities could choose to condemn existing water rights to supply their needs. Other comments about possible impacts from the various reservations mentioned higher hydroelectric rates, more saline seeps, limited water availability for new storage projects, difficulty in changing water rights, and decreased flows for fishing and boating.

DNRC staff members are adding to the list of comments as they collect baseline data

and begin to analyze the potential environmental impacts of each reservation application. The staff will soon begin sorting through all of the scoping comments and others gathered within the department to identify critical issues and to determine the scope of the EIS. The draft EIS is tentatively slated for publication in January 1991.

DNRC has compiled all of the scoping comments into a 38-page summary document, entitled "Missouri Reservations: Scoping Comments and Questions." You can request a copy by writing to:

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